Rich's Precision Foundry, Inc. and United Steelworkers of America, AFL-CIO-CLC, Petitioner. Case 25-RC-7743

June 30, 1982

DECISION AND DIRECTION

CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties, and approved by the Acting Regional Director for Region 25 of the National Labor Relations Board on September 25, 1981, an election by secret ballot was conducted on October 20, 1981, among the employees in the stipulated unit. Upon conclusion of the balloting, the parties were furnished with a tally of ballots which showed that, of approximately 48 eligible voters, 46 cast ballots, of which 22 were for, and 16 against, the Petitioner. There were eight challenged ballots, a number sufficient to affect the election results. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 25 conducted an investigation and, on November 24, 1981, issued and duly served on the parties his Report on Objections and Challenged Ballots. In his report, the Regional Director recommended that the Employer's objections be overruled and that a hearing be held to resolve issues raised by all eight challenged ballots. In the absence of any exceptions filed by the parties, the Board issued an Order, on December 16, 1981, adopting the Regional Director's recommendations.

On December 11 and 18, 1981, a hearing was held to determine the eligibility of the challenged voters. Thereafter, on January 15, 1982, the Hearing Officer issued his Report on Challenged Ballots in which he recommended that the challenges to the ballots of Phillip Bailey, Mike Barnett, and Jay Morrison be sustained, and that the Petitioner be certified in the unit found appropriate, since the remaining challenged ballots were no longer determinative of the election results. In the event that a party filed successful exceptions to any of his findings on the above-named employees' status, the Hearing Officer further recommended overruling the challenges to the other five ballots concerned herein. The Employer subsequently filed exceptions

only to the rulings on the challenged ballots of Bailey and Morrison.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board finds:

- 1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act, as amended, and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
- 3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 4. The parties have stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
 - All production and maintenance employees of the Employer at its Yorktown, Indiana facility, including truck drivers; but excluding all office clerical employees, all professional employees, all guards and supervisors as defined in the Act.
- 5. The Board has considered the Hearing Officer's report, the Employer's exceptions and brief, and the entire record in this case, and hereby adopts the Hearing Officer's findings and recommendations, except as modified herein.²

The Hearing Officer concluded that Jay Morrison is a supervisor under Section 2(11) of the Act because he attends daily production meetings and has apparent authority to discipline and lay off employees. In sustaining the challenge to Phillip Bailey's ballot, the Hearing Officer found that he is either a cooperative student or a casual employee lacking a sufficient community of interest with other employees to warrant his inclusion in the unit. We find merit in the Employer's exceptions to these findings for the reasons set forth below.

1. Morrison earns \$9.13 hourly as a maintenance man and electrician for the Employer. He reports directly to Steven Bailey, the Employer's plant manager, and receives his work assignments from Bailey at production meetings held each morning. While the Employer provides Morrison with a

¹ In recommending that the challenge to Barnett's ballot be sustained, the Hearing Officer incorrectly referred to David Barnett, a current employee of the Employer who testified at the hearing, instead of Mike Barnett, whose eligibility was in question. We hereby correct the Hearing Officer's inadvertent error.

² In the absence of exceptions thereto, we adopt, *pro forma*, the Hearing Officer's recommendations that the challenge to Mike Barnett's ballot be sustained and that the challenges to the ballots of Brian Cunningham, Louis Goodman, Gary Knotts, Oliver West, and Steven Wright be overruled

desk and telephone in its supply room, he spends only about 30 minutes there per day taking inventory of repair parts or placing supply orders with the Employer's purchasing agent. The rest of his time is spent performing maintenance jobs at his work station located outside this room or in other areas of the plant. Morrison must seek Bailey's permission to perform overtime work.

During most periods before the election, Morrison was assisted by part-time employees Phillip Bailey or Tony Clevenger. Morrison initialed their timecards and assigned them work from the schedule prepared by Steven Bailey. The principal evidence of Morrison's alleged supervisory authority concerns two incidents that occurred near the election date. On September 22, 1981, Morrison gave Phillip Bailey a written warning for lateness. Although the warning slip itself indicates that Morrison issued the reprimand, the record discloses that Steven Bailey initiated the disciplinary action. An office clerical then typed the document which Morrison delivered to the employee. Thereafter, on October 4, 1981, Morrison notified Phillip Bailey that he was being laid off due to lack of work.

Contrary to the Hearing Officer, we do not find the evidence sufficient to establish that Morrison possesses or exercises any of the statutory indicia of supervisory authority. The evidence reveals that Morrison primarily attends the daily production meetings to obtain the day's work schedule from Plant Manager Bailey. While Morrison may assign some of these tasks to helpers working with him, the record is clear that he does not exercise any independent judgment in performing this function. His work assignments and directions are exactly those given by skilled workers to apprentices and helpers.3 Likewise, the few disciplinary warnings that he has given other employees are not shown to have been effective recommendations, since the record establishes that Steven Bailey made these decisions based on his own independent investigation. Thus, we find that Morrison merely serves as a conduit for the plant manager's work orders and personnel decisions, rather than as an employee who exercises supervisory authority.4

In reaching this conclusion, we note that Morrison's status is virtually identical to that of Steven Wright, the furnace operator, who the Hearing Officer found is not a supervisory employee. Wright also is a skilled and highly paid employee who spends at least 85 percent of his time performing physical work. Similar to Morrison, he attends daily production meetings, assigns work to his helpers, initials their timecards, and occasionally

serves them with disciplinary warnings. In attempting to distinguish between these employees' status, the Hearing Officer principally relied on his finding that Morrison, unlike Wright, has actual or apparent authority to lay off employees. However, the record contains no evidence that Morrison made the decision to lay off Phillip Bailey. Indeed, the testimony of Morrison and Steven Bailey was that Morrison has no authority to lay off employees. Finally, we find little significance in the facts that Wright earns lower wages than Morrison and does not have a desk or telephone, since these facts fail to indicate supervisory authority.

For the above reasons, we conclude that the record in this case fails to show that Morrison is a supervisor as defined by the Act. Accordingly, we hereby overrule the challenge to Morrison's ballot and shall direct that it be opened and counted.

2. Phillip Bailey, the younger brother of the Employer's plant manager, works between 15 and 30 hours weekly as a maintenance helper. He also is a full-time student at a university near the Employer's facility. When not attending school during the summer months, Bailey regularly works 40 hours per week assisting Morrison in the performance of maintenance functions. On or about October 4, the Employer laid off Bailey due to lack of work. Bailey subsequently was recalled on October 20, the election date, and worked about 13 hours before again being laid off 3 days later. The Employer had not recalled him as of the hearing date.

We disagree with the Hearing Officer's recommendation to exclude Bailey as a cooperative student or casual employee.⁵ It is well established, as the Hearing Officer found, that students are to be included in the bargaining unit when they have been regularly employed during the relevant period.⁶ Here, the record discloses that Bailey worked 15 or more hours each week for over a year before the election. In finding him ineligible, the Hearing Officer relied on the evidence of Bailey's October 4 layoff. There is no showing, however, that Bailey was ineligible for recall to his former job or that there existed no reasonable expectation of recall. Indeed, the Employer did recall him, albeit briefly, on the election date. In these circumstances, we conclude that Bailey is an eligible voter since he continued to hold the status of a regular part-time employee when the election took place. Accordingly, we also overrule the challenge to his ballot.

³ See Westlake United Corporation, 236 NLRB 1114 (1978).

⁴ Ralston Purina Company, 260 NLRB 314 (1982).

⁸ We agree with the Hearing Officer's finding in this case that Bailey's relationship to the plant manager is not of a special nature so as to warrant his exclusion from the unit.

Waterloo Surgical & Medical Group, 213 NLRB 321 (1974).

DIRECTION

It is hereby directed that the Regional Director for Region 25 shall, within 10 days from the date of this Decision and Direction, open and count the ballots of Phillip Bailey, Brian Cunningham, Louis Goodman, Gary Knotts, Jay Morrison, Oliver West, and Steven Wright, and shall thereafter prepare and cause to be served on the parties a revised tally of ballots, upon which basis he shall issue the appropriate certification.